STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1951 - 1954

thirty taxpayers in Indian Township all but two have paid the tax voluntarily. As to these two, your office is required to institute lien proceeding on February 1, 1953, to enforce collection of the tax assessed.

We would note that under Sec. 72 of Chapter 14 "The State Tax Assessor may, subject to the approval of the governor and council . . if justice requires, make an abatement of any state, county or forestry district taxes." Without attempting to limit or define in any way the authority of your office to abate taxes, we think it clear that such power exists in those instances where the courts would be authorized to act.

Upon the facts we would advise the following in answer to your questions. We think the imminence of legal steps to enforce a lien on the property of Mr. McDowell constitutes legal duress and would justify equity action in enjoining the collection of the tax. This being so, we think you would be justified in abating that portion of the tax assessed against him as is excessive. This will leave the way clear for you to carry out your duty to enforce collection of the tax by lien proceedings. In regard to that portion of the tax paid voluntarily by other residents, we are of the opinion there is no remedy at law or in equity available to them and that reimbursement for them would be legally an act of grace better left to the Legislature. We would add that we think the situation would justify a resolve presented to the Legislature on behalf of these taxpayers since the State is morally obligated to refund the excessive amount though not legally so obligated.

We understand that the customary procedure in the case of abatement of such a State tax is to distribute the abatement pro rata against the various levies going to make up the total tax; however, in view of the peculiar facts of this situation, it is our opinion that the entire amount of the abatement in question should be charged against the Unorganized Territory School Fund.

MILES P. FRYE
Assistant Attorney General

February 2, 1953

To Earle R. Hayes, Secretary, Maine State Retirement System
Re: Two Beneficiaries

We have your memo of January 22, 1953, in which you state that an employee of the State Highway Commission had attained eligibility for retirement, due to the fact that she had attained age 60, but died while still in service. She had designated her two sons as beneficiaries at the time she filed her original application for membership in the System and this designation had never been changed.

Under the provisions of section 10 of Chapter 60 of the Revised Statutes, it is provided that under such circumstances Option 2 becomes effective.

You ask if, in our opinion, two persons can receive a benefit under the provisions of Option 2, or is only one person entitled to a benefit under Option 2.

It is our opinion that the Retirement Board should make payments to both sons of the deceased under the provisions of Option 2.

The legislature has determined that under the above described circumstances it would be as if a member had elected Option 2. It is stated in your memo that the actuary is of the opinion that only one person is eligible for benefits under Option 2 and that if two persons are to be considered beneficiaries, then Option 4 should have been selected. However, as noted in your memo, before the benefits of Option 4 could be available to the beneficiary, it would be necessary for the member to substitute a program under that Option. The member never so specified; and we feel that neither the Board nor this office should substitute its opinion for that of the legislature in determining which option should be available to the member. In view of the fact that the member indicated not one but two beneficiaries at the time she filed her initial application for membership and that such application was accepted by the Board without objection, we are of the opinion that the State is estopped from denying the beneficiaries the benefits of Option 2.

For these reasons this office is of the opinion that the two beneficiaries designated by the member are eligible to receive the benefits provided in Option 2.

You have indicated to us orally that, administratively, it would be difficult to make the benefits of Option 2 available to more than one beneficiary. If the question had been posed to us in the first instance, we should probably have ruled that the statute contemplated only one principal beneficiary. Under the present facts, however, we must rule that there may be two beneficiaries. In view of the practical difficulty involved in administering the benefits to more than one person, it might be advisable in future to have one principal beneficiary designated and perhaps contingent beneficiaries, the latter taking in the event they survived the principal beneficiary.

JAMES G. FROST
Deputy Attorney General

February 3, 1953

To Honorable Burton M. Cross, Governor of Maine
Re: Eligibility for Appointment to Dental Board

This office has been asked if a man who has served over nine years but less than ten years on a dental examining board is eligible for re-appointment to the Board of Dental Examiners.

Specifically, it is asked if the following provision quoted from Section 1, Chapter 66, R. S. 1944, would preclude the appointment of such a person.

> "No person shall be eligible to appointment on said board *who shall have served 10 years or more* on a dental examining board in this state."

It is our opinion that, if otherwise qualified, such a person would be eligible to be appointed to the Board.

Attention is directed to the underlined section of the above quoted provision.

The clear intent of such a provision is to make ineligible for appointment such person who has completed 10 or more years of service at the time the necessity for appointment arises. Until a person has completed 10 or more